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ARIZONA SUPREME COURT

PETITION

NO.

FOR)
)
 RULE CHANGE)
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COMES NOW, Jack Levine and, pursuant to Rule 28 of the Rules of the Supreme Court, hereby petitions this Honorable Court to:

(1) Modify the introductory paragraph of Rule 43 (a) by deleting the words "*No trust account required by this rule may have over-draft protection*" and instead substitute the following: "*Lawyers are encouraged to obtain over-draft protection for all trust accounts.*"¹¹

(2) Delete Rule 43(b)2. C. in its entirety.

(3) Renumber sub-paragraphs D. and E. of Rule 43(b) as sub- paragraphs C. and D. respectively and, add a new sub-paragraph E., as follows:

*"In the event of an overdraft in a trust account, upon notification by the financial institution of such over-draft, a lawyer shall rectify such overdraft within five (5) business days of receipt of such notice. If such overdraft is not rectified within the time allotted by this rule, the financial institution shall notify the state bar who shall promptly investigate the reason(s), if any, for such delay. If a satisfactory explanation is not provided, the state bar may institute a disciplinary charge against the lawyer, or take such other action as deemed necessary to obtain compliance with these rules. In the event of an over-draft lasting more than 10 business days, an automatic suspension of the lawyer's license to practice shall occur, until the overdraft is rectified."*¹¹

(4) Modify Rule 43(b), subparagraph C. by adding at the end of said subparagraph the following: *"For all checks in excess of \$5,000 that are deposited in the lawyer's trust account, the lawyer shall wait at least ten {10} business days before distributing any funds represented by such check to be sure that such check clears the drawer's account."*¹¹

(5) Modify Rule 43(d), sub-paragraph 1. by deleting in its entirety the second sentence of such sub-paragraph starting with the words *"In addition to trust account examinations ..."*

GROUND AND REASONS FOR MODIFYING RULE 43

It is respectfully submitted that the current version of **Rule 43** is complicated, time-consuming and expensive to administer, particularly for the average lawyer who does not possess a sufficient background or experience in balancing a checking account or in bookkeeping. Although Petitioner's experience in such matters may be *sui generis*, in his entire life he has never had the responsibility for maintaining .filri_type of checking account.

Before his marriage, Petitioner did not have a checking account. After his marriage, Petitioner's wife managed their joint checking account and for the first 10 years as a lawyer he was employed by law firms which had a full-time bookkeeper. When Petitioner became a sole practitioner in 1974 and thereafter, his Legal Assistants' maintained his trust account. Because Petitioner had no skill or experience in such matters, he did not trust himself to personally undertake such tasks, for fear of making a mistake and thereby causing harm to his clients.

It should be recognized that almost all overdrafts in lawyers' trust accounts are the result of innocent mistakes by either the lawyer, the client, a third party, or occasionally, by a financial institution and, usually involve relatively small amounts of money. An exception is when a client obtains a large settlement or

recovery, which settlement check or draft is deposited in the lawyer's trust account and, before the check or draft has cleared, due to an error, the lawyer issues a check to the client drawn on the trust account and, to the lawyer for any fee that is due. However, in such cases any overdraft normally lasts for only a matter of days, during which time the settlement check or draft clears and the integrity of the trust account is automatically restored. Petitioner's proposed modification to Rule 43 (b) C. herein, would serve to reduce or eliminate such occurrences.

The proposed modifications to Rule 43 herein are also designed to eliminate expensive and time-consuming efforts on the part of lawyers and the State Bar to comply with current trust account rules which, as a practical matter, are of little benefit to the public. It is submitted that the present rules do nothing to protect the public against the intentional conversion of client monies. This, of course, is the role of the Client Protection Fund, which is available for such losses. If the current rules can be modified by adopting the proposed changes herein, collectively, many millions of dollars in time and money can be saved each year without putting any client at risk of losing any portion of their funds.

Such savings can be realized by eliminating staff positions at the State Bar which are now involved in investigating compliance with our trust account rules and pursuing lawyers for minor, unintentional trust account violations. Petitioner has had the personal experience of having to answer multiple bar complaints where no client has ever lost any money, except on one occasion when a client temporarily lost \$0.80. Such loss occurred when Petitioner's Legal Assistant made a scrivener's error in writing checks for a client's share of his monthly worker's compensation benefits. The client was shorted \$0.20 for four (4) consecutive months until the error was discovered, at which time, the client was promptly reimbursed.

On another occasion, several years ago, Petitioner re-ordered deposit slips for his trust and operating accounts. Petitioner's bank in processing the order, mistakenly reversed the account numbers, so that for several months all of Petitioner's trust account deposits went into his operating account and his operating account deposits all went into his trust account. At the time, this was not immediately discovered because neither Petitioner nor his Legal Assistant knew how to properly reconcile the account. When this finally resulted in an over-draft, it was promptly remedied within a matter of hours and, with the help

of a professional bookkeeper, the deposits that had gone into the wrong accounts were reversed.

If the present rules were modified as proposed herein, lawyers will greatly benefit by having dozens of hours of their time available each month that are now being devoted to reconciling their trust account records. Also, lawyers can save many thousands of dollars per year that now must be spent on employees, bookkeepers and accountants to reconcile their trust accounts **and**, in responding to state bar investigations and bar complaints, if this is not properly done.

Also, if lawyers were relieved of these burdensome and largely unnecessary trust account tasks, they would have more time to devote to solving their clients' legal problems and may even increase their *pro bona* activities. Also, with the financial savings that could be realized with the adoption of simplified and more practical trust account rules, the fees that lawyers presently charge their clients for their legal services, could, in many cases, be reduced.

For the above reasons, Petitioner prays that after due consideration, the Court will adopt the proposed rule changes suggested herein.

Respectfully submitted this 1st day of July, 2017.

By:

/JaCk Levine